

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-206699

**DATE:** November 25, 1985

**MATTER OF:** Military Reserve Technicians' Pay

**DIGEST:**

A statutory provision limiting the combined military and civilian compensation of military Reserve technicians to the rate payable for level V of the Executive Schedule should have been applied on a biweekly pay period basis rather than an annual basis, since the statutory language and legislative history indicate that it is to be applied similarly to related statutory pay rate limitations for other employees which are applied on a pay period basis.

The issue presented in this matter is whether the pay limitation imposed by section 775 of the Department of Defense Appropriation Act, 1982, which operated to restrict the combined military and civilian compensation of Reserve and National Guard technicians to the rate payable for level V of the Executive Schedule in 1981 and 1982, should have been applied on a biweekly pay period basis rather than on an annual basis.<sup>1/</sup> We conclude that this limitation on compensation should have been applied on a biweekly basis.

Background

Persons employed in a civilian capacity by the Departments of the Army and the Air Force as technicians for the support of certain Reserve component programs are required to maintain a concurrent military status as reservists.<sup>2/</sup>

<sup>1/</sup> This action is in response to a request for a decision dated April 16, 1985, from the Secretary of the Air Force. The Secretary's request has been assigned control number SS-AF-1452 by the Department of Defense Military Pay and Allowance Committee.

<sup>2/</sup> See, generally, 32 U.S.C. § 709; and 53 Comp. Gen. 493 (1974).

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They receive salaries as full-time civilian employees and, in addition, they receive military pay and allowances for duty they perform under orders as members of the Reserve. With respect to those persons, section 775 of the Department of Defense Appropriation Act, 1982, provides that:

"SEC. 775. None of the funds appropriated by this Act for the pay of Reserve and National Guard technicians based upon their employment as technicians and their performance of duty as members of the Reserve components of the Armed Forces shall be available to pay such technicians a combined compensation in excess of the rate payable for level V of the Executive Schedule: Provided, That for purpose of calculating such combined compensation, no military compensation other than basic pay will be included."<sup>3/</sup>

The pertinent congressional committee report relating to the enactment of section 775 contains this explanation concerning its purpose:

"PAY CAP FOR GUARD AND RESERVE TECHNICIANS

"The committee recommends a new general provision \* \* \* which would limit the pay of Guard and Reserve technicians to \$50,112 annually. This is the same level at which all other government employees are capped.

"Currently some Guard and Reserve full time technician personnel in GS grades 14 and 15 earn in compensation considerably more than \$50,112 annually which is the rate of pay at which most other government employees are capped. These technicians do what is

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<sup>3/</sup> Public Law 97-114, § 775, approved December 29, 1981, 95 Stat. 1565, 1590-91.

essentially one job, even though the conditions of their employment require they be uniformed members of the Unit in which they serve as 'full-time' technicians. In other words, they cannot hold the one job without the other. This is also different from the Government employee who is a member of a Reserve or Guard unit. In this case his membership is purely voluntary and this represents a second job. Personnel who support the Navy Reserve and Marine Corps Reserve do not receive two separate pay checks for performing one job.

"The continuation of the pay cap has led to a situation where high level technicians, serving in GS grades 14 and 15 receive maximum pay or nearly the maximum of \$50,112 in pay for a full time job and then receive anywhere from 60 to 100 additional days of pay at the Lt. Colonel or Colonel level. This has the effect of making their total pay level from the Federal Government more than that provided to high ranking generals and top ranking civilian officials of the Department of Defense."<sup>4/</sup>

This provision limiting the combined compensation of the technicians to the rate payable for employees at level V of the Executive Schedule became effective upon its enactment on December 29, 1981, and was continued in effect into the beginning of fiscal year 1983 on October 1, 1982, by operation of a continuing appropriations resolution.<sup>5/</sup> Authority under that continuing resolution expired on December 17, 1982, and the Department of Defense Appropriation Act, 1983, enacted on December 21, 1982, contained no similar technician pay limitation.<sup>6/</sup>

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<sup>4/</sup> H.R. Rep. No. 333, 97th Cong., 1st Sess. 287-288 (1981).

<sup>5/</sup> Public Law 97-276, approved October 2, 1982, 96 Stat. 1186.

<sup>6/</sup> Public Law 97-377, approved December 21, 1982, 96 Stat. 1830, 1833.

The rate payable for employees holding positions at level V of the Executive Schedule, as prescribed by 5 U.S.C. § 5316, is "the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title."<sup>7/</sup> During the period in question, per annum level V basic pay was set at \$50,112, until January 1, 1982, when it was increased to \$57,500.<sup>8/</sup> As indicated in the congressional report, with certain exceptions the maximum compensation of Federal employees is limited by law to the rate of pay prescribed for level V of the Executive Schedule.<sup>9/</sup>

A biweekly pay period is fixed by law for employees of Federal executive agencies.<sup>10/</sup> We have consistently held that the statutory provisions described in the previous paragraph, limiting pay to the rate prescribed for level V of the Executive Schedule, are to be applied on a pay period basis rather than on a calendar or fiscal year basis for agency employees, including those employed temporarily or intermittently.<sup>11/</sup>

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<sup>7/</sup> That is, the rate fixed under the quadrennial review provisions of 2 U.S.C. §§ 351-361, as adjusted yearly following the comparability increases in rates payable under the General Schedule.

<sup>8/</sup> By Public Law 97-92, §§ 101(g) and 141, approved December 15, 1981, 95 Stat. 1183, 1190, 1200. Per annum level V pay was again increased to \$63,800 4 days after the technicians' pay cap expired on December 17, 1982. Public Law 97-377, § 129, December 21, 1982, 96 Stat. 1830, 1914.

<sup>9/</sup> See, e.g., 5 U.S.C. §§ 5308, 5547.

<sup>10/</sup> See 5 U.S.C. § 5504.

<sup>11/</sup> See, e.g., Jerome E. Hass, 58 Comp. Gen. 90, 93-94 (1978); Donald Bodine, 60 Comp. Gen. 198, 199 (1981); Lieutenant Colonel Robert C. McFarlane, USMC (Retired), 61 Comp. Gen. 221, 222-223 (1982); and Lieutenant General Ernest Graves, Jr., USA (Retired), 61 Comp. Gen. 604, 606 (1982).

Nevertheless, in a memorandum dated January 26, 1982, the Office of the Secretary of Defense advised the Departments of the Army and the Air Force that the compensation limitation at issue prescribed by section 775 of the Department of Defense Appropriation Act, 1982, should be applied on an annual rather than a pay period basis. The memorandum noted that if the compensation limitation were applied on a biweekly pay period basis, the technicians would be limited to combined compensation of \$2,221 per pay period. It was indicated that this would affect about 3,250 Air National Guard and Air Force Reserve technicians and 1,420 Army National Guard and Army Reserve technicians, and it was asserted that "[a]n impact of \* \* \* [this] magnitude would \* \* \* cause \* \* \* unnecessary turbulence surely not intended by the Congress." It was also noted that because the technicians served on active military duty intermittently, the compensation limitation would have a minimal effect if it were instead applied on an annual basis. The memorandum contained statements to the effect that because section 775 did not specifically direct that the compensation limitation be applied on a pay period basis, and because it appeared desirable to minimize the pay limitation required by the provision, the limitation should instead be applied on an annual basis.

Air Force officials report that doubts arose concerning the propriety of applying the limitation on an annual basis. In a June 1984 opinion the Office of the Judge Advocate General of the Air Force stated that "the cap should have been properly applied on a 2-week pay period rate," and recommended that the issue be referred here for resolution. The Secretary of the Air Force now requests our decision in the matter.

#### Analysis and Conclusion

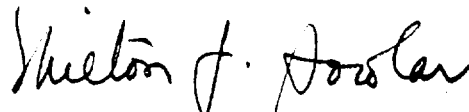
Congress did not state specifically in section 775 of the Department of Defense Appropriation Act, 1982, whether the limitation on the technicians' compensation was to be applied on a pay period basis, or an annualized basis, or on some other basis. We observe, however, that section 775 did place the cap on the "rate payable" for level V employees, and under law level V employees are not paid annually but are paid on a 2-week pay period basis. Moreover, as indicated previously, statutes capping the pay of other

B-206699

employees at the level V rate are applied on a pay period basis. Thus, our view is that a consistent construction placed on the related provisions of section 775 of the Department of Defense Appropriation Act, 1982, required that the limitation on the technicians' pay be applied on a biweekly pay period basis rather than on some other basis.

In addition we note that, prior to this pay limitation being adopted, these technicians were already subject to the level V pay limitation on their civilian salaries under 5 U.S.C. § 5308, applicable on a biweekly pay period basis. What the additional limitation did, in our view, was include both military and civilian compensation within the limitation. This view is consistent with the legislative history's explanation that the limitation was adopted because technicians "do what is essentially one job," whether in a civilian or military capacity, and, therefore, their combined compensation should be limited to "the same level at which all other government employees are capped."

We conclude, therefore, that the limitation on the technicians' compensation contained in section 775 should have been applied on a biweekly pay period basis, and that the alternative method used was improper.

*for*   
Comptroller General  
of the United States